P.E.R.C. NO. 81-86

STATE OF NEW JERSEY
BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of

WATCHUNG HILLS REGIONAL HIGH
SCHOOL BOARD OF EDUCATION,

Petitioner,

-and- Docket No. SN-81-24

WATCHUNG HILLS REGIONAL
EDUCATION ASSOCIATION,

Respondent.

SYNOPSIS

The Commission, in a scope of negotiations proceeding, determines, in a grievance arbitration context, that the matter in dispute relates to class size rather than to workload and compensation. After several English teachers had voluntarily left the district, the Board assigned the students of the teachers who had left to those English teachers remaining. The Association grieved the increased workload and sought to have class size decreased. Although the Commission determines that class size is not a required subject of negotiations and therefore is not arbitrable, the parties' contractual grievance procedure has a terminal step of advisory arbitration. In its decision in Bd. of Ed. of the Twp. of Bernards v. Bernards Twp. Ed. Assn, 79 N.J. 311 (1979), the Supreme Court stated that an advisory arbitration clause does not interfere with the exercise of managerial prerogative and its utilization may well bring about beneficial consequences. Accordingly, the Commission concludes that the Bernards Twp. decision is controlling herein and that the instant matter may proceed to advisory arbitration.

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Appearances:

For the Petitioner, Buttermore, Mullen & Jeremiah
(William S. Jeremiah, of Counsel)

For the Respondent, John Thornton, NJEA UniServ
Representative

DECISION AND ORDER

A Petition for Scope of Negotiations Determination was filed with the Public Employment Relations Commission on October 29, 1980 by the Watchung Hills Regional High School Board of Education (the "Board") seeking a determination as to whether a certain matter in dispute between the Board and the Watchung Hills Regional Education Association (the "Association") is within the scope of collective negotiations within the meaning of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13A-1 et seq. (the "Act"). Briefs were filed by both parties by November 6, 1980.

The relevant facts herein, as concerns a scope of negotiations determination, do not appear to be in dispute. The

Board and the Association entered into a collective negotiations agreement for the period from July 1, 1978 to June 30, 1980. Two provisions included in that agreement are referred to in the Association's grievance which gave rise to the instant scope proceeding. The provisions are as follows:

> Article VII, Pargraph M -
>
> Beginning in the 1979-80 school year there shall be a straight seven period schedule which shall replace the seven period drop schedule. The present length of the school day will not be altered (6 hours and 35 minutes).
>
> Article VII, Pargraph N -
>
> In the 1970-80 school year full time English teachers shall teach five classes. Part time English teachers shall teach three classes. The staff for 1979-80 will consist of the following persons: Mrs. D. Egger, Mrs. S. Acquadro, Mrs. D. Battiato, Mr. J. Battiato, Mrs. D. DeGeronimo, Mr. J. Donnelly, Mrs. P. Farese, Mrs. P. Gardner, Mr. R. Jensen, Mr. M. Kalmanowitz, Mr. G. Kimmel, Mr. W. Lee, Mr. G. Manka, Mr. P. Millstein, Mr. T. Myers, Mrs. M. Phelan, Mrs. F. Sills, Mrs. M. Travers and Mrs. J. Werner.

The two contractual provisions were not included in prior agreements between these parties. Prior to the 1979-80 school year, full time English teachers taught four classes per day and part time English teachers taught two classes.

The Board characterizes Article VII, Paragraph N as an anti-RIF provision; the Association asserts that the intent of the section was to insure that the student load per teacher per day was not increased as a result of the newly negotiated fifth period.

During the 1979-80 school year, the Board did not RIF any English teachers; however, several English teachers voluntarily left the district. Thereafter, the Board assigned to the English teachers who remained in the district the students of those English teachers who had voluntarily left. On September 18, 1979, the Association filed a grievance as follows:

> Increased workload for English teachers as relates to student load and the bargaining agreement (VII M/N).

The relief sought by the Association was stated in the grievance as follows:

> Class size (student load) be decreased to levels existing in prior 78-79 school year and adequate compensation for additional workload.

In its demand for arbitration filed on January 11, 1980, the Association categorized the nature of the dispute as "increased workload;" the remedy sought as stated in its arbitration demand was:

> Reduction of work load and compensation for the additional work load.

The parties' contract contains a zipper clause and a grievance procedure which provides for advisory arbitration.[1/]

The Board contends that class size is the issue in dispute and that it is neither mandatorily negotiable nor arbitrable. The Association argues that the issue in dispute relates

1/ The arbitration clause provides that if the Board rejects three advisory arbitration awards, all arbitration awards rendered thereafter shall be binding on the parties. No assertion was made here that the Board had rejected any prior arbitration awards. Thus, the instant dispute would proceed under advisory arbitration.

to workload and accordingly is mandatorily negotiable and arbitrable. The Board does not contest the negotiability of workload nor does the Association contend that class size is negotiable. However, the Association does argue that, assuming arguendo that the subject is not mandatorily negotiable, under Bd of Ed of the Township of Bernards v. Bernards Twp. Ed Ass'n, 79 N.J. 311 (1979), the matter should not be kept from proceeding to arbitration.

We have carefully considered the parties' arguments. The issue in dispute is an alleged increase in class size which is asserted to be in violation of the parties' agreement. In the grievance the Association sought to have the alleged increase rescinded. In its demand for arbitration the Association has modified its requested relief so that it is now phrased in terms of a requested "reduction of workload" and a demand for compensation for the added work already performed.

Class size is not a required subject for negotiations and a grievance seeking to have class size reduced could not proceed to binding arbitration.[2/] Whether the additional demand for compensation for the increased workload would make all or part of this dispute subject to binding arbitration is an issue we need not resolve in this case. We agree with the Association's position that under the particular facts and grievance procedure

2/ In re Rutgers, The State University, P.E.R.C. No. 76-13, 2 NJPER 13 (1976); In re New Jersey Institute of Technology, P.E.R.C. No. 80-27, 5 NJPER 392 (¶10202 1979); and In re Wanaque Borough Board of Education, P.E.R.C. No. 80-152, 6 NJPER 323 (¶11160 1980).

in the contract, that the Supreme Court's decision in Bernards Township, supra, is controlling. In Bernards the Court stated:

> Advisory arbitration does not give rise to the adverse consequences that might ensue were binding arbitration deemed permissible....
>
> Not only is advisory arbitration not detrimental to the public interest, its utilization may well bring about beneficial consequences... Finally, we cannot overlook the potential favorable effects that such a procedure will have upon the morale of public employees, inasmuch as they will be permitted to present their cause - even if only as an initial matter - to an individual whom they do not consider aligned in interest with the Board.
>
> Thus, an advisory arbitration clause does not interfere with the exercise of managerial prerogative. Moreover, its inclusion in a collective agreement will directly and intimately affect the work and welfare of the public employee. Consequently, a provision in a negotiated grievance procedure calling for advisory arbitration - even if it encompasses disputes concerning the applicability of managerial prerogatives - is itself a term and condition of employment. as that phrase is defined in our caselaw... Seen in another way, advisory arbitration provides public employees with the opportunity to make known their grievances. N.J. Const. (1947) Art. I, para. 19.
>
> Thus, we hold that the parties may agree to submit to advisory arbitration disputes concerning the applicability to individual employees of matters of governmental policy....
>
> ...Since a contractual grievance procedure providing for adivsory arbitration is indisputably a term and condition of employment, this agreement is valid and enforceable.... 79 N.J. at 325-327.

In consideration of the foregoing language, we conclude that the instant matter can proceed to advisory arbitration.

ORDER

Pursuant to N.J.S.A. 34:13A-5.4(d) and the foregoing discussion, the Commission determines that the matter in dispute may proceed to advisory arbitration if otherwise arbitrable under the parties' agreement.

BY ORDER OF THE COMMISSION

James W. Mastriani
Chairman

Chairman Mastriani, Commissioners Hartnett and Parcells voted in favor of this decision. None opposed. Commissioners Hipp and Newbaker abstained. Commissioners Graves was not present.

DATED: Trenton, New Jersey
January 20, 1981
ISSUED: January 21, 1981